

Issue date: November 16, 2005



REQUEST FOR PROPOSALS No. 0806583397

NOTICE TO VENDORS

The [Iowa Department of Administrative Services](#), on behalf of the [Iowa Homeland Security and Emergency Management Division](#) of the Department of Public Defense, will be receiving sealed proposals until 3:00 p.m., Central Time, December 19, 2005 for:

AGRICULTURE & FOOD SURVEILLANCE ASSESSMENT SERVICES

Late proposals will not be considered. For information regarding this notice, and throughout the competitive acquisition process, interested service providers shall contact only the issuing officer:

Ashley Super
Purchasing Agent III
Iowa Department of Administrative Services
General Services Enterprise - Purchasing
Hoover State Office Building –Level A
Des Moines, Iowa 50319-0105
Phone: 515-281-7073
Fax: 515-242-5974
E-mail: Ashley.Super@iowa.gov

TABLE OF CONTENTS

Section 1 Introduction

- 1.1 Purpose
- 1.2 Background Information

Section 2 Administrative Information

- 2.1 Issuing Officer
- 2.2 Restriction on Communication
- 2.3 Downloading the RFP from the Internet
- 2.4 Procurement Timetable
- 2.5 Questions, Requests for Clarification, and Suggested Changes
- 2.6 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal
- 2.7 Submission of Bid Proposals
- 2.8 Bid Proposal Opening
- 2.9 Costs of Preparing the Bid Proposal
- 2.10 Rejection of Bid Proposals
- 2.11 Disqualification
- 2.12 Nonmaterial and Material Variances
- 2.13 Reference Checks
- 2.14 Information from Other Sources
- 2.15 Verification of Bid Proposal Contents
- 2.16 Bid Proposal Clarification Process
- 2.17 Disposition of Bid Proposals
- 2.18 Public Records and Requests for Confidential Treatment
- 2.19 Copyrights
- 2.20 Release of Claims
- 2.21 Presentations
- 2.22 Evaluation of Bid Proposals Submitted
- 2.23 Award Notice and Acceptance Period
- 2.24 Definition of Contract
- 2.25 Choice of Law and Forum

- 2.26 Restrictions on Gifts and Activities
- 2.27 No Minimum Guaranteed
- 2.28 Performance Standards, Review, and Monitoring Provisions

Section 3 Service Requirements

- 3.1 Introduction
- 3.2 Ownership of Materials and Deliverables
- 3.3 Scope of Work/Deliverables
- 3.4 Additional Deliverables

Section 4 Format and Content of Bid Proposals

- 4.1 Instructions
- 4.2 Technical Proposal
- 4.3 Cost Proposal

Section 5 Evaluation of Bid Proposals

- 5.1 Evaluation Steps
- 5.2 Evaluation Committee
- 5.3 Evaluation Criteria

Section 6 Contract Terms and Conditions

- 6.1 Contract Terms and Conditions
- 6.2 Contract Length

Attachments

- 1. Proposal Certification
- 2. Certification of Independence and No Conflict of Interest
- 3. Certification Regarding Debarment, Suspension, and Eligibility, and Voluntary Exclusion
- 4. Authorization to Release Information
- 5. Certification of Confidentiality
- 6. Service Contract

Section 1 Introduction

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified service providers who can provide the following services:

1. Research and analyze existing state animal health surveillance systems
2. Research and analyze existing federal animal health surveillance systems
3. Research and analyze existing public health surveillance systems
4. Conduct a needs assessment to identify Partnership priorities and needs relative to surveillance
5. Propose 3 potential solutions to the Partnership surveillance challenges
6. Depending on available funding, design and develop the Partnerships approved solution

These deliverables will be provided to the Iowa Homeland Security and Emergency Management Division of the Iowa Department of Public Defense (IHLSEM). IHLSEM is working in collaboration with the Multi-State Partnership for Security in Agriculture (Partnership) to develop and implement interstate agro-security planning initiatives and model asset protection for the food supply chain under a grant received from the United States Department of Homeland Security, Office of Domestic Preparedness. The development of the emergency response analysis and coordination materials by the successful vendor will involve discussions and consensus building with members of the Partnership. See Section 1.2 below for more information about the Partnership and the grant.

Prospective vendors are asked to submit a single proposal for all deliverables. Alternate solutions should be presented in separate proposals. The Partnership intends to award a three-month contract beginning on January 1, 2006.

Any contract resulting from this RFP shall not be an exclusive contract and all deliverables provided by the vendor under this RFP and any resulting contract, including the emergency response analysis and coordination materials produced by the vendor, will become the sole property of IHLSEM. Distribution of the model and materials to third parties will be at IHLSEM's sole discretion.

1.2 Background Information

This RFP is designed to provide vendors with the information necessary for the preparation of competitive bid proposals. The RFP process is for IHLSEM's benefit and is intended to provide competitive information to assist in the selection process. It is not intended to be comprehensive. Each vendor is

responsible for determining all factors necessary for submission of a comprehensive bid proposal.

- This RFP is issued by IHLSEM, who will be working in coordination with the Partnership.
- The Partnership is a consortium of eleven states (Illinois, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, South Dakota, and Wisconsin) departments of agriculture, state veterinarians/livestock commissioners, homeland security advisors, and emergency management administrators. The Partnership was created by the ten states to ensure that America's agricultural system is secure, its citizens are safe and its economy is strong. Through this consortium, participating states will collaborate on surveillance of, preparation for, and response to, threats in agriculture, whether intentionally introduced or naturally occurring, and coordinate these efforts with all levels of government.
- The Partnership has identified emergency response as an area of focus.
- The goals of this project are to improve coordination between states during agriculture emergencies and maximize training and exercise opportunities for states.
- Funding for this contract comes from the federal Department of Homeland Security, Office of Domestic Preparedness under the Urban Areas Security Initiative Discretionary Grant Program. **IHLSEM will not accept proposals that exceed \$100,000.**
- The Department of Homeland Security reserves a royalty-free, non-exclusive, an irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (1) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a recipient or sub-recipient purchases ownership with Federal support.

Section 2 Administrative Information

2.1 Issuing Officer

The Issuing Officer, identified below, is the sole point of contact regarding the RFP from the date of issuance until the procurement process is complete.

Ashley Super, Purchasing Agent III
Iowa Department of Administrative Services
General Services Enterprise - Purchasing
Hoover State Office Building –Level A
Des Moines, Iowa 50319-0105
Phone: 515-281-7073
Fax: 515-242-5974
E-mail: ashley.super@iowa.gov

2.2 Restriction on Communication

From the issue date of this RFP until announcement of the successful vendor, vendors may contact only the Issuing Officer. The Issuing Officer will respond only to questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted in writing to the Issuing Officer by 4:30 p.m., central time, Nov. 29, 2005. Verbal questions related to the interpretation of this RFP will not be accepted. Vendors may be disqualified if they contact any employee or representative of IHLSEM or any state that is a participant in the Partnership, other than the Issuing Officer.

2.3 Downloading the RFP from the Internet

All amendments will be posted on Iowa Homeland Security and Emergency Management's home page at:

http://www.iowahomelandsecurity.org/asp/resource_room/info_library.asp .

The vendor is advised to check the Iowa Homeland Security and Emergency Management's home page periodically for amendments to this RFP.

2.4 Procurement Timetable

The following dates are set forth for informational and planning purposes; however, the IHLSEM reserves the right to change the dates.

Issue RFP	11/16/05
Last Day to Submit Questions	COB 11/29/05
Response to Questions	COB 12/05/05
Closing Date for Receipt of Bid Proposals	12/19/05, 3:00 PM CT

2.5 Questions, Requests for Clarification, and Suggested Changes

Vendors are invited to submit written questions and requests for clarifications regarding the RFP. Vendors may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or

suggestions must be in writing and received by the Issuing Officer before 4:30 p.m., central time on Nov. 29, 2005. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced. Written responses to questions, requests for clarifications, or suggestions will be posted on the agencies website on or before Dec. 5, 2005. If IHLSEM decides to adopt a suggestion, IHLSEM will issue an amendment to the RFP. IHLSEM assumes no responsibility for verbal representation made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

2.6 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal

IHLSEM reserves the right to amend the RFP at any time. The vendor shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of bid proposals, IHLSEM may, in its sole discretion, allow vendors to amend their bid proposals in response to IHLSEM's amendment if necessary. The vendor may amend its bid proposal. The amendment must be in writing, signed by the vendor and received by time set for the receipt of proposals. Electronic mail and faxed amendments will not be accepted. Vendors who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Vendors must notify the Issuing Officer in writing if they wish to withdraw their proposals. Electronic mail and faxed requests to withdraw will not be accepted.

2.7 Submission of Proposals

Proposals shall be delivered to the Issuing Officer marked with RFP Number. Any proposal received after the deadline will be rejected and returned unopened to the vendor. Vendors mailing bid proposals must allow ample mail delivery time to ensure timely receipt of their bid proposals. It is the vendor's responsibility to ensure that the bid proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the bid proposal. Electronic mail and faxed bid proposals will not be accepted. Vendors must furnish all information necessary to evaluate the bid proposal. Bid proposals that fail to meet the mandatory requirements of the RFP will be disqualified. Verbal information provided by the vendor shall not be considered part of the vendor's proposal.

2.8 Proposal Opening

The bid proposals will remain confidential until the Evaluation Committee has reviewed all bid proposals submitted in response to this RFP and IHLSEM has announced a notice of intent to award a contract. See Iowa Code Section 72.3.

2.9 Costs of Preparing the Bid Proposal

The costs of preparation and delivery of the bid proposal are solely the responsibility of the vendor.

2.10 Rejection of Bid Proposals

IHLSEM reserves the right to reject any or all bid proposals or any portion thereof without penalty at any time, including prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by IHLSEM to award a contract or to execute a binding contract with the successful vendor that may be selected as a result of this RFP. IHLSEM further reserves the right to cancel this RFP, to issue a new RFP or to award a contract in whole or in part if it is in the best interests of IHLSEM or the Partnership. This RFP is designed to provide vendors with the information necessary to prepare a competitive bid proposal. This RFP process is for the benefit of IHLSEM and the Partnership and is intended to provide IHLSEM with competitive information to assist in the selection of a vendor to provide services. It is not intended to be comprehensive and each vendor is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

2.11 Disqualification

IHLSEM will reject outright and will not evaluate proposals for any one of the following reasons:

- 2.11.1** The vendor fails to deliver the bid proposal by the due date and time.
- 2.11.2** The vendor fails to deliver the cost proposal in a separate envelope.
- 2.11.3** The vendor proposes a total cost of over \$100,000.00.
- 2.11.4** The vendor states that a service requirement cannot be met.
- 2.11.5** The vendor's response materially changes a service requirement.
- 2.11.6** The vendor's response limits the rights of IHLSEM or the Partnership.
- 2.11.7** The vendor fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability; representations that future developments will satisfy the requirement are not sufficient.
- 2.11.8** The vendor fails to respond to IHLSEM's request for information, documents, or references.

- 2.11.9** The vendor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in section 4 of this RFP.
- 2.11.10** The vendor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- 2.11.11** The vendor initiates unauthorized contact regarding the RFP with any employee or representative of IHLSEM or any state participant in the Partnership, other than the Issuing Officer.
- 2.11.12** The vendor provides misleading, conflicting or inaccurate responses.

2.12 Nonmaterial and Material Variances

IHLSEM reserves the right to waive or permit cure of nonmaterial variances in the bid proposal if, in the judgment of IHLSEM, it is in the best interest of IHLSEM or the Partnership to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other vendors; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event that IHLSEM waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the vendor from full compliance with RFP specifications or other contract requirements if the vendor is awarded the contract. The determination of materiality is in the sole discretion of IHLSEM.

2.13 Reference Checks

IHLSEM reserves the right to contact any reference to assist in the evaluation of the bid proposal, to verify information contained in the bid proposal and to discuss the vendor's qualifications and the qualifications of any subcontractor identified in the bid proposal.

2.14 Information from Other Sources

IHLSEM reserves the right to obtain and consider information from other sources concerning a vendor, such as the vendor's capability, financial strength, and performance under other contracts.

2.15 Verification of Bid Proposal Contents

The content of a bid proposal submitted by a vendor is subject to verification. Misleading or inaccurate responses will result in disqualification.

2.16 Bid Proposal Clarification Process

IHLSEM reserves the right to contact a vendor after the submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual

understanding. This contact may include written questions, interviews, site visits, a review of past performance if the vendor has provided goods or services to the states and their agencies participating in the Partnership or any political subdivision wherever located, or requests for corrective pages in the vendor's bid proposal. IHLSEM will not consider information received if the information materially alters the content of the bid proposal or alters the type of goods and services the vendor is offering to IHLSEM. An individual authorized to legally bind the vendor shall sign responses to any request for clarification. Responses shall be submitted to IHLSEM within the time specified in IHLSEM's request. Failure to comply with requests for additional information may result in rejection of the bid proposal as noncompliant.

2.17 Disposition of Bid Proposals

All proposals become the property of IHLSEM and shall not be returned to the vendor unless all bid proposals are rejected or the RFP is cancelled. In either event, vendors will be asked to send prepaid shipping instruments to IHLSEM for return of the bid proposals submitted. In the event that IHLSEM does not receive shipping instruments, IHLSEM will destroy the bid proposals. Otherwise, at the conclusion of the selection process, the contents of all bid proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

2.18 Public Records and Requests for Confidential Treatment

IHLSEM and other participants in the Partnership may treat all information submitted by a vendor as public information following the conclusion of the selection process unless the vendor properly requests that information be treated as confidential at the time of submitting the bid proposal. IHLSEM's release of information is governed by Iowa Code chapter 22. The release of vendor's information by any other participant in the partnership is governed by the state public records laws applicable to that participant. Vendors are encouraged to familiarize themselves with chapter 22 before submitting a proposal. IHLSEM and participants in the Partnership will copy, disclose and permit examination of public records as required to comply with the public records laws. Any request for confidential treatment of information must be included in the transmittal letter with the vendor's bid proposal. In addition, the vendor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the vendor to respond to any inquiries by IHLSEM concerning the confidential status of the materials. Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire bid proposal as confidential may be deemed non-responsive and disqualify the vendor. If the vendor designates any

portion of the RFP as confidential, the vendor must submit one copy of the bid proposal marked "PUBLIC COPY" from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in section 4 of this RFP. Vendor must also submit a "Public Copy" on CD. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible. IHLSEM will treat the information marked confidential as confidential information only to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction. In the event that IHLSEM receives a request for information marked confidential, written notice shall be given to the vendor seven calendar days prior to the release of the information to allow the vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code. The vendor's failure to request confidential treatment of material will be deemed by IHLSEM as a waiver of any right to confidentiality, which the vendor may have had.

2.19 Copyrights

By submitting a bid proposal, the vendor agrees that IHLSEM and participants in the Partnership may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. The vendor consents to such copying by submitting a bid proposal and represents and warrants that such copying will not violate the rights of any third party. IHLSEM and other participants in the Partnership shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

2.20 Release of Claims

By submitting a bid proposal, the vendor agrees that it will not bring any claim or cause of action against IHLSEM or any participant in the Partnership based on any misunderstanding concerning the information provided herein or concerning IHLSEM's or any other participant's failure, negligent or otherwise, to provide the vendor with pertinent information as intended by this RFP.

2.21 Presentations

Vendors may be required to make a presentation of the bid proposal. The presentation may occur at a location requested by IHLSEM. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of IHLSEM. The presentation may include slides, graphics and other media selected by the vendor to illustrate the vendor's bid proposal. The presentation shall not materially change the information contained in the bid proposal.

2.22 Evaluation of Bid Proposals Submitted

Bid proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 5 of the RFP. IHLSEM will not

necessarily award any contract resulting from this RFP to the vendor offering the lowest cost. Instead, IHLSEM will award the contract to the compliant vendor whose proposal receives the most points in accordance with the evaluation criteria set forth prior to the initiation of the evaluation process and subject to approval of the Multi-State Partnership for Security in Agriculture Steering Committee.

2.23 Award Notice and Acceptance Period

Notice of intent to award the contract will be sent by mail to all vendors submitting a timely bid proposal. Negotiation and execution of the contract shall be completed no later than January 1, 2006. If the apparent successful vendor fails to negotiate and deliver an executed contract by January 1, 2006, IHLSEM may cancel the award and award the contract to the next highest ranked vendor.

2.24 Definition of Contract

The full execution of a separate written contract shall constitute the making of a contract for services and no vendor shall acquire any legal or equitable rights relative to the goods or services to be provided in connection with this RFP unless a separate written contract, with terms and conditions acceptable to IHLSEM, has been fully executed by IHLSEM and the successful vendor. By submitting a proposal, each vendor acknowledges that any award of a contract or selection of a successful vendor by IHLSEM under this RFP, including, without limitation, any verbal or written notice thereof provided by or on behalf of IHLSEM, shall not create any contractual rights or other obligations between IHLSEM and the successful vendor until a separate, written contract has been executed by IHLSEM and the successful vendor.

2.25 Choice of Law and Forum

This RFP and the resulting contract are to be governed by the laws of the state of Iowa. Changes in applicable laws and rules may affect the award process or the resulting contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

2.26 Restrictions on Gifts and Activities

Iowa Code Chapter 68B restricts gifts which may be given or received by State of Iowa employees and requires certain individuals to disclose information concerning their activities with state government. Vendors are responsible to determine the applicability of this chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

2.28 Performance Standards, Review and Monitoring Provisions

Iowa Code Section 8.47 (1) and 11 Iowa Admin. Code 107 require that State of Iowa agency contracts for services contain provisions which, among other things: (i) describe the amount or basis for paying compensation to the vendor based on the vendor's performance under the contract; (ii) vendor's compliance with the services contract; and (iii) describe the methods by which the agency can effectively review the vendor's performance of the services contract, including, but not limited to performance measurements. Please furnish, as a part of your proposal, recommended provisions for inclusion in the services contract that comply with the service contract requirements described above.

SECTION 3 SERVICE REQUIREMENTS

3.1 Introduction

The selected vendor must work with each of the Partnership States to accurately research and review state plans pertaining to food, agriculture, and plant emergency response, as well as each states food, plant or animal emergency response team structure. The selected vendor must research and review the National Response Plan and the National Incident Management System to assure that state plans are consistent with federal initiatives. The selected vendor will be required to consult subject matter experts and current research and literature.

As many initiatives addressing agriculture and food security are ongoing nationwide, inventorying and analyzing these programs for gaps will be helpful in preventing duplication and planning future training and exercise opportunities.

3.2 Ownership of Materials and Deliverables

By submitting a proposal, each vendor agrees that all materials, work product and other deliverables (the “Deliverables”) to be produced or provided under a contract and all intellectual property rights in or related to the Deliverables shall become and remain the sole and exclusive property of IHLSEM. The successful vendor will be required to assign all right, title, and interest in and to all of the foregoing to IHLSEM. As owner of the Deliverables and related intellectual property rights, IHLSEM may: (i) obtain and hold copyrights, patents or such other registrations or intellectual property protections with respect to the Deliverables as may be desirable or appropriate, (ii) adapt, change, modify, edit, or use the Deliverables as IHLSEM sees fit, including in combination with the works of others, (iii) prepare derivative works based on the Deliverables and publish, display, and distribute any Deliverable (s) in any medium, and (iv) sell, license, sublicense, lease, or permit others to use the Deliverables and any intellectual property rights therein or related thereto, all without payment of any additional compensation to vendor.

3.3 Scope of Work/Deliverables

3.3.1 Surveillance System Analysis throughout the Food Supply Chain

The selected vendor will:

- A. Identify all surveillance systems existing throughout the entire food supply chain, with special emphasis on animal disease and syndromic surveillance systems.
- B. The selected vendor will identify existing capabilities in surveillance systems throughout the food-supply chain. The vendor will assess both state and federal surveillance systems.

- C. The vendor will identify the capabilities, scope and limitations of each system.
- D. The vendor will identify areas where the systems integrate with each other.
- E. The vendor will identify any gaps in surveillance throughout the food supply chain.
- F. The vendor will present its findings in a formal report to Partnership detailing, at a minimum, the above-mentioned components

3.3.2 Partnership Needs Assessments

The selected vendor will conduct a needs assessment with the Partnership States to identify their disease reporting and syndromic surveillance needs.

- 3.3.2.1. The selected vendor shall meet via teleconference or in person with officials from each Partnership State separately to discuss their current disease reporting and surveillance systems, as well as their needs and expectations.
- 3.3.2.2 From the vendor and Partnership State meetings the vendor will be expected to compile a comprehensive list all Partnership states specific expectations.
- 3.3.2.3 The vendor will compile a final report, summarizing all Partnership State meetings and outcomes. The vendor will submit the report and list of expectations to the Partnership for review.

3.3.3 Identify Three (3) Possible Solutions

Based upon the vendor's conclusions in 3.3.1 and 3.3.2 the Partnership will determine the priority areas on which the Partnership would like to focus. The vendor will identify 3 possible solutions to address the surveillance needs of Partnership States in the priority areas.

- 3.3.3.1 The selected vendors proposed solutions shall be detailed and meet the expectations identified in 3.3.2.
- 3.3.3.2 The selected vendors proposed solutions shall incorporate existing capabilities as identified in 3.3.1 as much as possible.
- 3.3.3.3 The selected vendor shall include estimated prices for development of each solution in the proposals.
- 3.3.3.4 The selected vendor shall prepare a report for the Partnership addressing all items contained in 3.3.3.

SECTION 4 FORMATS AND CONTENT OF BID PROPOSALS

4.1 Instructions

- 4.1.1** The bid proposal shall be typewritten on 8.5" x 11" paper.
- 4.1.2** The bid proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal separately sealed from the Technical Proposal. The bid proposal shall be sealed in an envelope. If multiple envelopes for each bid proposal are used, the envelopes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The envelopes shall be labeled with the following information:

**Vendor's name and address
RFP No. 0806583397**

- 4.1.3** One (1) original and (3) copies of the bid proposal, each in a sealed envelope, shall be timely submitted to the Issuing Officer. In addition, an electronic copy in searchable **PDF format** shall be provided.
- 4.1.4** If the vendor designates any information in its proposal as confidential pursuant to section 2.22, the vendor must also submit one (1) copy of the bid proposal from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible. In addition, an electronic copy in searchable **PDF format** shall be provided.
- 4.1.5** Bid proposals shall not contain promotional or display materials.
- 4.1.6** Attachments shall be referenced in the bid proposal.
- 4.1.7** If a vendor proposes more than one method of meeting these requirements, each should be labeled and submitted separately. Each will be evaluated separately.

4.2 Technical Proposal

The following documents and responses shall be included in the bid proposal in the order given below:

4.2.1 Transmittal Letter

An individual authorized to legally bind the vendor shall sign the transmittal letter. The letter shall include the vendor's mailing address,

electronic mail address, fax number, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public. The transmittal letter shall also contain the name, address and telephone number of the individual authorized to respond to the IHLSEM about the confidential nature of the information.

4.2.2 Table of contents

The vendor shall include a table of contents of its bid proposal.

4.2.3 Executive Summary

The vendor shall prepare an executive summary and overview of the services it is offering, including all of the following information:

- 4.2.3.1** Statements that demonstrate that the vendor understands and agrees with the terms and conditions of the RFP and the proposed contract.
- 4.2.3.2** A vision and mission statement for this program.
- 4.2.3.3** An overview of the vendor's plans for items in the scope of work.
- 4.3.3.4** A demonstration of the vendor's knowledge of the scope of work.

4.2.4 Service Requirements

The vendor shall address each service requirement in Section 3 of the RFP and explain in detail how it plans to approach each requirement. Proposals must be fully responsive to service requirements. Merely repeating the requirements will be considered non-responsive and may disqualify the vendor. Proposals must identify any deviations from the requirements of this RFP or requirements the vendor cannot satisfy. Any deviations from the requirements of the RFP or any requirement of the RFP that the vendor cannot satisfy may disqualify the vendor.

4.2.5 Background Information

The vendor shall provide the following general background information:

- 4.2.5.1** Name, address, telephone number, fax number and e-mail address of the vendor including all d/b/a or assumed names or other operating names of the vendor.

- 4.2.5.2** Form of business entity, i.e., corporation, partnership, proprietorship, or 'limited liability Company'.
- 4.2.5.3** State of incorporation, state of formation, or state of organization.
- 4.2.5.4** Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the vendor's performance under the terms of this RFP.
- 4.2.5.5** Local office address and phone number (if any).
- 4.2.5.6** Number of employees.
- 4.2.5.7** Type of business.
- 4.2.5.8** Name, address and telephone number of the vendor's representative to contact regarding all contractual and technical matters concerning this proposal.
- 4.2.5.9** Name, address and telephone number of the vendor's representative to contact regarding scheduling and other arrangements.
- 4.2.5.10** Name and qualifications of any subcontractors who will be involved with this project.
- 4.2.5.11** Identify the vendor's accounting firm.
- 4.2.5.12** The successful vendor will be required to register to do business in Iowa. If already registered, provide the date of the vendor's registration to do business in Iowa and the name of the vendor's registered agent.

4. 2.6 Experience

The vendor must provide the following information regarding its experience:

- 4.2.6.1** Number of years in business.
- 4.2.6.2** Number of years experience with providing the types of services sought by the RFP.
- 4.2.6.3** Describe the level of technical experience in providing the types of services sought by the RFP.

4.2.6.4 List all services similar to those sought by this RFP that the vendor has provided to other businesses or governmental entities.

4.2.6.5 Letters of reference from three (3) previous clients knowledgeable of the vendor's performance in providing services similar to the services described in this RFP and a contact person and telephone number for each reference.

4.2.7 Personnel

The vendor must provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

4.2.7.1 Full name.

4.2.7.2 Education.

4.2.7.3 Years of experience and employment history particularly as it relates to the scope of services specified herein.

4.2.8 Financial Information

The vendor must provide the following financial information

4.2.8.1 Submit audited financial statements (annual reports) for the last 3 years.

4.2.8.2 Provide a minimum of three (3) financial references.

4.2.9 Terminations, Litigation, Debarment

The vendor must provide the following information:

4.2.9.1 During the last five (5) years, has the vendor had a contract for services terminated for any reason? If so, provide full details related to the termination.

4.2.9.2 During the last five (5) years, describe any damages or penalties of anything of value traded or given up by the vendor under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP and the resulting Contract. If so, indicate the reason for the penalty or exchange of property or services and the estimated account of the cost of that incident to the vendor.

- 4.2.9.3** During the last five (5) years, describe any damages or penalties or anything of value traded or given up by vendor under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP. If so, indicate the reason for the penalty or exchange of property or services and the estimated amount of the cost of that incident to the vendor.
- 4.2.9.4** During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the vendor to engage in any business, practice or activity.
- 4.2.9.5** During the last five (5) years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the vendor to perform the required services. The vendor must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful vendor after the execution of a contract, must be disclosed in a timely manner in a written statement to the Agency.

4.2.10 Proposal Certification

The vendor shall sign and submit with the bid proposal the document included as Attachment # 1 in which the vendor shall certify that the contents of the bid proposal are true and accurate.

4.2.11 Acceptance of Terms and Conditions

The vendor shall specifically agree that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the vendor objects to any term or condition, the vendor must specifically refer to the RFP page, and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the vendor.

4.2.12 Certification of Independence and No Conflict of Interest

The vendor shall verify that it developed the bid proposal independently. The vendor shall also certify that no relationship exists or will exist during

the contract period between the vendor and IHLSEM that interferes with fair competition or is a conflict of interest. IHLSEM reserves the right to reject a bid proposal or cancel the award if, in its sole discretion, any relationship exists that could interfere with fair competition or conflict with the interests of IHLSEM or the Partnership. See Attachment #2.

4.2.13 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

The vendor shall sign and submit with the bid proposal the document included as Attachment # 3 in which the vendor shall certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, department or agency.

4.2.14 Authorization to Release Information

The vendor shall sign and submit with the bid proposal the document included as Attachment # 4 in which the vendor authorizes the release of information to the IHLSEM.

4.2.15 Firm Bid Proposal Terms

The vendor shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of 120 days following the deadline for submitting proposals.

4.2.15 Vendor Registration

Vendors shall register to do business with the State at:
http://das.gse.iowa.gov/gen_info/vendor_reg.html

4.3 Cost Proposal

Each vendor will provide its fixed cost proposal in a separately sealed envelope based upon the deliverables described in section 3.3. IHLSEM will disqualify proposals where the total fixed costs for deliverables in 3.3 exceed the budgeted amount of \$100,000. The cost proposal should a separate fixed cost for each major deliverable, as described below and in section 3.3.

Please specify the fixed costs for each of the following deliverables described in section 3.3 and the total fixed price for all deliverables provided under section 3.3.

A) Research and analyze existing state animal health surveillance systems:

\$ _____

B) Research and analyze existing federal animal health surveillance systems:

\$ _____

C) Research and analyze existing public health surveillance systems:

\$ _____

D) Conduct a needs assessment to identify Partnership priorities and needs relative to surveillance:

\$ _____

E) Propose 3 potential solutions to the Partnership surveillance challenges:

\$ _____

F) Depending on available funding, design and develop the Partnerships approved solution:

\$ _____

Total - Not-to-Exceed Fixed Price for all deliverables specified in Section 3.3:

\$ _____

Costs proposed by _____

Section 5 Evaluation of Bid Proposals

The evaluation process is designed to award the contract not necessarily to the vendor of least cost, but rather to the vendor with the best combination of attributes to perform the required services.

5.1 Evaluation Steps

The evaluation and award process shall consist of the following:

- a. Review of the bid proposals to assess compliance with mandatory requirements;
- b. Detailed evaluation of proposed services, programs, and solutions;
- c. Presentations (if determined necessary by the Evaluation Committee);
- d. Scoring of technical proposals;
- e. Scoring of cost proposals;
- f. Integration of technical score and cost score into an Evaluation Committee recommendation to the Multi-State Partnership for Security in Agriculture Steering Committee.
- g. Award decision is made by the Multi-State Partnership for Security in Agriculture Steering Committee. The evaluation committee will make a recommendation to the Multi-State Partnership for Security in Agriculture Steering Committee indicating the committee's recommendation. The Multi-State Partnership for Security in Agriculture Steering Committee will select the vendor to receive the award. The Multi-State Partnership for Security in Agriculture Steering Committee is not bound by the committee's recommendation.

5.2 Evaluation Committee

IHLSEM intends to conduct a comprehensive, fair and impartial evaluation of bid proposals received in response to this RFP. IHLSEM will use an Evaluation Committee to review and evaluate the proposals.

5.3 Evaluation Criteria

The Evaluation Committee will evaluate and score all proposals meeting all mandatory requirements. A weighted scoring system will be used. Technical Proposals will be weighted 90% of the total score. Cost Proposals will be weighted 10% of the total score.

Section 6 Contract Terms and Conditions

6.1 Contract Terms and Conditions

Any contract between IHLSEM and the successful vendor shall be a combination of the specifications, terms and conditions of the Request for Proposal, including the terms contained in Attachment #6, the offer of the vendor contained in the vendor's proposal, written clarifications or changes made in accordance with provisions herein, and any other terms deemed necessary or acceptable by IHLSEM and its counsel.

The contract terms contained in Attachment #6 are not intended to be a complete listing of all contract terms but are provided only to enable vendors to better evaluate the costs associative with the RFP and the potential resulting contract. Vendors should plan on such terms being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in the cost proposal or any pricing quoted by the vendor.

By submitting a proposal, each vendor acknowledges its acceptance of these specifications, terms and conditions contained in the RFP, including those in Attachment #6, without change except as otherwise expressly stated in its proposal. If a vendor takes exception to a provision, it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by IHLSEM, as determined in its sole discretion, resulting in possible disqualification of the vendor's proposal. IHLSEM reserves the right to refuse to enter into a contract with the successful vendor, even after delivery of notice of selection or intent to award a contract, if IHLSEM and the vendor are unable to agree to terms and conditions that are acceptable to IHLSEM or if the best interests of IHLSEM or the Partnership would be served.

Any resulting contract(s) entered into between the state and the successful vendor shall not contain any provisions that:

1. Limit the liability of the successful vendor (or any approved subcontractor) for breach of contract, breach of warranty, misrepresentation, bad faith, fraud, indemnity, tort, negligence, gross negligence, strict liability, or any other claim or cause of action;
2. Limit the liability of the successful vendor (or any approved subcontractor) for any type of damages or loss, including, without limitation, consequential, indirect, incidental, special, and exemplary/punitive damages;
3. Limit or cap the aggregate liability of the successful vendor (e.g., a liability cap or ceiling equal to the value of the contract or a multiple thereof);
4. Specify sole and/or exclusive remedies applicable to the state; or
5. Otherwise limit the rights and remedies of the state.

6.2 Contract Length

The term of the contract will be 3 months and will commence on January 1, 2006. IHLSEM shall have the sole option to renew the contract upon the same terms and conditions for additional renewal terms.

ATTACHMENTS

ATTACHMENT 1

PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL.

PROPOSAL CERTIFICATION

I certify that I have the authority to bind the vendor indicated below to the specific terms, conditions and technical specifications required in the attached Request for Proposal 0806583397 and offered in the vendor's proposal. I understand that by submitting this proposal, the vendor indicated below agrees to provide the services which meet or exceed the requirements of the RFP unless noted in the proposal and at the prices quoted by the vendor.

I certify that the contents of the proposal are true and accurate and that the vendor has not knowingly made any false or misleading statements in the proposal.

Signature:

Date

Printed Name and Title

Name of Vendor Organization

ATTACHMENT 2

PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL.

CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST

By submission of a proposal in response to RFP 0806583397, the vendor certifies (and in the case of a joint proposal, each party thereto certifies) that the proposal has been developed independently, without consultation, communication or agreement with any employee or consultant of the Department who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee; the proposal has been developed independently, without consultation, communication or agreement with any other vendors or parties for the purpose of restricting competition; unless otherwise required by law, the information in the proposal has not been knowingly disclosed by the vendor and will not knowingly be disclosed prior to the award of the contract, directly or indirectly, to any other vendor; no attempt has been made or will be made by the vendor to induce any other vendor to submit or not to submit a proposal for the purpose of restricting competition; no relationship exists or will exist during the contract period between the vendor and the Department that interferes with fair competition or is a conflict of interest.

Signature:

Date:

Printed Name and Title

Name of Vendor Organization

ATTACHMENT 3

PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

By signing and submitting this Proposal in response to RFP 80600S391, the vendor is providing the certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the vendor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The vendor shall provide immediate written notice to the person to which this Proposal is submitted if at any time the vendor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
4. The vendor agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The vendor further agrees by submitting this Proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

PAGE 1 of 2

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

- (1) The vendor certifies, by submission of this Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (2) Where the vendor is unable to certify to any of the statements in this certification, such vendor shall attach an explanation to this Proposal.

Signature

Date

Printed Name and Title

Name of Vendor Organization

ATTACHMENT 4

PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL.

AUTHORIZATION TO RELEASE INFORMATION

_____ (Name of vendor) hereby authorizes any person or entity, public or private, having any information concerning the vendor's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in RFP 0806583397, to release such information to the Department.

The vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Department or may otherwise hurt its reputation or operations.

The vendor is willing to take that risk. The vendor agrees to release all persons, entities, the Department, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

Printed Name of Vendor Organization

Signature of Authorized Representative

Date

Printed Name and Title

Attachment 5

PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL.

CERTIFICATION OF CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

I _____ (Print Name)

For _____ (Vendor)

Acknowledge that in the performance of responsibilities under a contract my company may acquire or have access information regarding State of Iowa employees, clients and/or Iowa citizens and that such information is designated as “proprietary and confidential”.

I acknowledge that my company may be subject to significant Federal and State criminal and civil penalties if it misuses or improperly releases / discloses the confidential information it may acquire or have access to.

Therefore, my company agrees not to disclose or misuse such information except for purposes of performing under the contract. If there is doubt over confidentiality, we will regard it as confidential information. We further agree to adhere to any written procedures and policies with respect to the handling of confidential information.

I understand, acknowledge, and agree that this confidentiality and nondisclosure agreement remains in full force and effect after the conclusion, termination or expiration of the contract.

(Signature) Date: _____

Attachment # 6

SERVICES CONTRACT

This Agreement for professional services (this "Agreement"), made and effective as of [], by and between the Iowa Department of Public Defense, Homeland Security and Emergency Management Division ("IHLSEM") and [], a [corporation] organized under the laws of [] ("Vendor"). The parties agree as follows:

Section 1. Purpose. The parties have entered into this Agreement for the purpose of retaining Vendor to provide professional services and other deliverables in connection with emergency response analysis and coordination materials for use in planning for and responding to agriculture disease and other agro-security emergencies. IHLSEM is collaborating with the Multi-State Partnership for Security in Agriculture (the "Partnership") to develop and implement interstate agro-security planning initiatives and model asset protection for the food supply chain under a grant received from the United States Department of Homeland Security, Office of Domestic Preparedness.

Section 2. Definitions.

2.1 "Acceptance" means that one or more Deliverables have satisfied IHLSEM's Acceptance Tests or have otherwise satisfied IHLSEM, as determined by IHLSEM. Final Acceptance means that all Deliverables have satisfied IHLSEM's Acceptance Tests or have otherwise reasonably satisfied IHLSEM, as determined by IHLSEM. Non-acceptance means that one or more Deliverables have not satisfied IHLSEM's Acceptance Tests or have otherwise not satisfied IHLSEM, as determined by IHLSEM.

2.2 "Acceptance Criteria" means the Specifications, functions, features, goals, performance measures, testing results and/or other criteria determined by IHLSEM against which the Deliverables shall be evaluated for purposes of Acceptance or Non-acceptance thereof.

2.3 "Acceptance Tests" or "Acceptance Testing" mean the tests, reviews, evaluations and other activities that are performed by or on behalf of IHLSEM or the Partnership, with the assistance of Vendor at IHLSEM's request, to determine whether the Deliverables meet the Acceptance Criteria, or otherwise satisfy IHLSEM, and that there are no Deficiencies with respect to any of the Deliverables.

2.4 "Confidential Information" means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a "disclosing party") to the other party (a "receiving party") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that:

2.4.1 Was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party;

2.4.2 Was known to the receiving party prior to the disclosure of the information by the disclosing party;

2.4.3 Was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information;

- 2.4.4 Becomes public knowledge, other than through an act or failure to act of the disclosing party;
- 2.4.5 Is publicly available or in the public domain at or prior to the time such information was disclosed by the disclosing party;
- 2.4.6 Is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party;
- 2.4.7 Is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or
- 2.4.8 Is disclosed by the receiving party with the written consent of the disclosing party.
- 2.5 "Deficiency" means a failure, omission, defect, interruption of service, or any other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification or applicable Acceptance Criteria.
- 2.6 "Deliverables" mean the services, goods, emergency response analysis and coordination materials to be provided by Vendor to IHLSEM under this Agreement as more specifically described in the Statement of Work attached hereto as Schedule A. Unless otherwise expressly provided in this Agreement, Deliverables shall include any and all Documentation, designs, copy, artwork, data, information, graphics, images, processes, inventions, techniques, materials, plans, papers, forms, reports, studies, source code, object code, devices, modifications, content, concepts, work product, and all other tangible and intangible works, materials and property of every kind and nature related to the Deliverables or otherwise produced or provided by Vendor in connection with this Agreement.
- 2.7 "Documentation" means all technical information, commentary, design documents, training materials and guides, manuals, worksheets, and all other information, documentation and materials related to or used in conjunction with the Deliverables.
- 2.8 "Project" means the project to develop the emergency response analysis and coordination materials and other Deliverables required to be provided by Vendor as described in this Agreement.
- 2.9 "Project Completion Date" means the date by which Vendor must complete all work and provide all Deliverables pursuant to this Agreement. For purposes of this Agreement, the Project Completion Date is April 18, 2005.
- 2.10 "Project Plan" means the Project Plan attached hereto as Schedule C, as modified from time to time upon written agreement of the parties. The Project Plan is incorporated into this Agreement by this reference as if fully set forth in this Agreement.
- 2.11 "Specifications" mean any and all specifications, requirements, performance standards, representations and criteria related to the Deliverables and stated or expressed in this Agreement (including the Statement of Work), Documentation, the RFP (as defined below), and the Proposal (as defined below). Specifications shall include Acceptance Criteria and any specifications, requirements, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.
- 2.12 "Statement of Work" means Schedule A to this Agreement, which describes or may describe the Deliverables, specific activities, milestones, delivery dates, Specifications, compensation, and any other information related to the Deliverables. The Statement of Work, which may be amended from time to time upon the written agreement of the parties, is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

2.13 "Third Party" means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

Section 3. Documents Incorporated.

3.1 Incorporation. IHLSEM's Request for Proposal No. for Agriculture/Food Surveillance Assessment # 0806583397 and Vendor's proposal dated _____, in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, amendments or other writings of IHLSEM or Vendor are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor's proposed revisions or modifications to the sample Services Contract attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

3.2 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications made by Vendor to the sample Services Contract attached to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or IHLSEM hereunder, unless expressly stated herein.

3.3 Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

3.4 No Inconsistency. The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. The contractual obligations of IHLSEM cannot be implied from the Proposal.

Section 4. Scope of Work.

4.1 Scope of Work. Vendor shall provide to IHLSEM all of the Deliverables specified in Schedule A, the Statement of Work, in accordance with the terms and conditions of this Agreement.

4.2 Amendments to Statement of Work and Specifications. The parties agree that Schedule A, Statement of Work, may be revised, replaced, or amended at any time during the term of this Agreement to reflect changes in Deliverables upon the mutual written consent of the parties.

4.3 Performance Standards. The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule B are incorporated herein by this reference as if fully set forth in this Agreement. [These must be included pursuant to 11 Iowa Admin. Code 107.]

4.4 Compliance with Grant Requirements. At IHLSEM's request, Vendor shall use its best efforts to assist IHLSEM in complying with any laws, rules, regulations, OMB Circulars, conditions or requirements applicable to IHLSEM in connection with IHLSEM's receipt, use or administration of the grant funds it received from the United States Department of Homeland Security, Office of Domestic Preparedness ("ODP") under the Urban Areas Security Initiative Discretionary Grant Program. Such assistance may include, but is not limited to, providing any information necessary

to assist IHLSEM with the preparation of financial and performance/progress reports and responding to audits.

4.5 Grant Management. Vendor acknowledges and agrees that the Project will be subject to review, oversight and control by the ODP, and that the ODP may direct, specify or otherwise require IHLSEM and the Vendor to modify Deliverables, work and/or activities associated with the Project based on program-related guidance or other inputs resulting from evaluations, progress reports, report submissions or as a result of information provided during regularly schedule meetings. Vendor agrees that it will use its best efforts to assist IHLSEM in complying with any directives, orders or other requirements specified by the ODP and will participate, at IHLSEM's request, in any meetings or conference calls with the ODP in the event IHLSEM determines that such participation is necessary or desirable.

4.6 Partnership Involvement. Vendor acknowledges that the Project is a collaborative effort involving the Partnership and that the Partnership may direct, specify or otherwise require modifications to the Deliverables. The Vendor agrees to cooperate with the Partnership and to participate, at IHLSEM's request, in any Partnership meetings or conference calls in the event IHLSEM determines that such participation is necessary or desirable.

Section 5. Compensation and Additional Rights and Remedies.

5.1 Compensation. In consideration of Vendor providing IHLSEM with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees associated with such Deliverables as specified in Schedule A, subject to all terms and conditions of this Agreement, including, without limitation Section 5.2 (Invoices) and Section 5.3 (Retention). All fees and other compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis. It is expressly understood and agreed that in no event will the total fees or compensation to be paid hereunder exceed the sum of \$100,000. IHLSEM shall not be required to pay any additional fees, expenses, costs, charges or other amounts in connection with the Deliverables to be provided hereunder other than as expressly stated herein. Vendor is not entitled to payment for any Deliverables provided under this Agreement if IHLSEM reasonably determines that any Deliverables or services have not been satisfactorily or completely delivered or performed, or that any Deliverable fails to meet any applicable Specifications. No payment, including final payment, shall be construed as acceptance of defective Deliverables or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement notwithstanding Vendor's receipt of any Acceptance or payment from IHLSEM. Vendor's acceptance of the last payment from IHLSEM shall operate as a release of all claims against IHLSEM by the Vendor and any subcontractor utilized by Vendor. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

5.2 Invoices. Upon receipt of notice of Acceptance from IHLSEM with respect to one or more deliverables, Vendor shall submit an invoice to IHLSEM requesting payment of the fee(s) specified in Schedule A associated with such Deliverables, less the Retained Amount(s) to be withheld in accordance with Section 5.3. All invoices submitted by Vendor shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain all information reasonably requested by IHLSEM. IHLSEM shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 IAC 41.1(2). IHLSEM may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, IHLSEM shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if IHLSEM believes the invoice is inaccurate or incorrect in any way.

5.3 Retention. Vendor and IHLSEM acknowledge that certain performance will be required of Vendor subsequent to Acceptance of the Deliverables by IHLSEM. Accordingly, to secure Vendor's performance under this Agreement, 10% of the fees or other compensation payable

hereunder shall be retained by IHLSEM (the "Retained Amounts"). The Retained Amounts shall be payable upon IHLSEM's delivery of notice of Final Acceptance to Vendor, subject to the terms and conditions hereof.

5.4 Erroneous Payments and Credits. Vendor shall promptly pay or refund to IHLSEM the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by IHLSEM of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due IHLSEM under this section 5.4, IHLSEM will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. IHLSEM may, in its sole discretion, elect to have Vendor apply any amounts due to IHLSEM under this Section 5.4 against any amounts payable by IHLSEM under this Agreement.

5.5 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of Vendor.

5.6 Set-off Against Sums Owed by Vendor. In the event that Vendor owes IHLSEM or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, IHLSEM may set off such sum against any sum invoiced to IHLSEM by Vendor in IHLSEM's sole discretion unless otherwise required by law. Amounts due to IHLSEM as liquidated damages or any other damages may be deducted by IHLSEM without a judgment or any court action from any money or sum payable by IHLSEM to Vendor pursuant to this Agreement or any other agreement between Vendor and IHLSEM.

5.7 Withholding Payments. In addition to pursuing any other remedy provided herein or by law, IHLSEM may withhold compensation or payments to Vendor, in whole or in part, without penalty to IHLSEM or work stoppage by Vendor, in the event IHLSEM determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by IHLSEM under this Agreement.

5.8 Correction. IHLSEM may correct any Deficiencies in any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from IHLSEM. IHLSEM may provide or procure the services reasonably necessary to cure the default, in which event Vendor shall reimburse IHLSEM for the reasonable cost of such services. In addition, Vendor must cooperate with IHLSEM or any third parties retained by IHLSEM who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

5.9 Monitoring and Review. IHLSEM shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement and output and quality measures. Such review and monitoring shall include IHLSEM's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

Section 6. Acceptance Tests, Project Management, Key Personnel and Liquidated Damages.

6.1. Time is of the essence in this Agreement. Vendor shall commence work under this Agreement and complete all phases and aspects of work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other

requirements specified in this Agreement, including those specified in the Statement of Work and the Project Plan.

6.2 All Deliverables shall be subject to IHLSEM's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all phases and aspects of work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to IHLSEM certifying that the Deliverable is ready for IHLSEM to conduct Acceptance Tests. At IHLSEM's request, Vendor shall assist IHLSEM in performing Acceptance Tests at no additional cost to IHLSEM. Within a reasonable period of time after IHLSEM has completed its Acceptance Testing, IHLSEM shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If IHLSEM concludes that a Deliverable satisfies applicable Acceptance Criteria and IHLSEM's Acceptance Tests, IHLSEM shall provide Vendor with notice of Acceptance with respect to such Deliverable. If IHLSEM concludes that a Deliverable fails to satisfy applicable Acceptance Criteria or IHLSEM's Acceptance Tests, IHLSEM shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event IHLSEM provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to IHLSEM within ten (10) days of Vendor's receipt of IHLSEM's notice of Non-acceptance so that IHLSEM may re-conduct its Acceptance Tests with respect to such Deliverable. In the event IHLSEM determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy applicable Acceptance Criteria or IHLSEM's Acceptance Tests, then IHLSEM shall have the continuing right, in its sole discretion to: (i) require Vendor to correct and repair such Deliverable within such period of time as IHLSEM may specify in a written notice to Vendor, (ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to IHLSEM's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs incurred by IHLSEM to correct such Deficiencies, including any costs or fees incurred as a result of retaining Third Party professional services; or (iv) terminate this Agreement and/or obtain and seek any and all available rights and remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, IHLSEM may terminate this Agreement pursuant to this Section 6.2 without providing Vendor with any further or additional notice or opportunity to cure. IHLSEM's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to IHLSEM's satisfaction. If IHLSEM concludes, in its sole discretion, that all Deliverables satisfy IHLSEM's Acceptance Tests or otherwise satisfy IHLSEM in its sole discretion, IHLSEM shall provide Vendor with notice of Final Acceptance with respect to such Deliverables.

6.3 Project Management and Reporting.

6.3.1 Project Manager. At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to IHLSEM to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by IHLSEM prior to her or his appointment as Vendor's Project Manager. Vendor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at IHLSEM's site as needed during the course of work under this Agreement and will be available either in

person, by telephone or E-mail to respond promptly (in no event less than 2 hours) during the business day to inquiries from IHLSEM.

6.3.2 Review Meetings. Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with IHLSEM project manager and representatives, unless otherwise mutually agreed, to discuss progress made by the Vendor in the performance of this Agreement. Vendor's Project Manager shall provide a status report, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Agreement performance shall be maintained by Vendor.

6.3.3 Reports. At the next scheduled meeting after which any party has identified a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. At a minimum, reports prepared by Vendor's Project Manager shall describe the previous week's activities, including any problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan and any problems that may have arisen that need to be addressed before proceeding to the next activities. Vendor's proposed format and level of detail for its status reports shall be subject to IHLSEM's approval.

6.3.4 Problem Reporting Omissions. IHLSEM's receipt of acceptance of a problem report shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that IHLSEM may have. IHLSEM's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

6.3.5 Change Order Procedure. IHLSEM may at any time request a modification to the Statement of Work using a change order. The following procedures for a change order shall be followed:

6.3.5.1 Written Request. IHLSEM shall specify in writing the desired modifications to the same degree of specificity as in the original Statement of Work.

6.3.5.2 Vendor's Response. Vendor shall submit to IHLSEM a firm time and cost proposal and any proposed modifications to the Project Plan for the requested change order within five (5) business days of receiving IHLSEM's change order request.

6.3.5.3 Acceptance of Vendor's Estimate. If IHLSEM accepts Vendor's proposal, Vendor shall perform the modified services subject to the firm time and cost proposals included in Vendor's response and subject to the terms and conditions of this Agreement.

6.4 Key Personnel. IHLSEM considers [name project manager and any other key personnel of Vendor] from Vendor to be essential to a successful project. Vendor shall not remove, reassign or substitute the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of IHLSEM's written consent. If at any time during the term of this Agreement, IHLSEM becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, IHLSEM shall notify Vendor of the reasons for such dissatisfaction and may request the replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to IHLSEM on the corrective action Vendor believes is appropriate to address IHLSEM's concerns.

and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected promptly with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

Section 7. Term. The term of this contract shall be three months beginning on January 1, 2006. The decision to extend the Agreement will be at the sole option of IHLSEM. The initial term of the contract is from January 1, 2006 through April 1, 2006.

Section 8. Representations, Warranties and Covenants

8.1 Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies, and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement for a period of six (6) months following the date on which IHLSEM provides notice of Final Acceptance. During the Warranty Period, Vendor shall, at IHLSEM's request, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications at no cost to IHLSEM within five (5) business days of receiving notice of such Deficiencies or failures from IHLSEM. In the event Vendor is unable to repair, correct or replace such Deliverable, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement and IHLSEM shall be entitled to pursue any other available contractual, legal or equitable remedy.

8.2 Vendor represents and warrants that it is fully aware of IHLSEM's business requirements and intended uses for the Deliverables as set forth in the RFP, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended uses.

8.3 Vendor represents and warrants that: (a) all Deliverables shall be wholly original with and developed and prepared solely by Vendor (except for any materials prepared by IHLSEM and provided to Vendor for its use in connection with this Agreement); (b) it owns, possesses, holds, and has received or secured all rights (including intellectual property rights in or related to the Deliverables), permits, permissions, licenses and authority necessary to provide the services and Deliverables to IHLSEM hereunder and to assign, grant and convey the benefits, licenses and other rights assigned, granted or conveyed to IHLSEM hereunder without violating any rights of any Third Party; and (c) IHLSEM shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

8.4 Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) IHLSEM's use of, or exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and shall not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right, or misappropriation of a trade secret related to the Deliverables. Vendor shall inform IHLSEM in writing immediately upon becoming aware that IHLSEM's use of or exercise of any rights with respect to any Deliverable may give rise to a claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim arises, or in IHLSEM's opinion is likely to arise, then Vendor shall, at IHLSEM's request: (i) procure for IHLSEM the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to IHLSEM all fees, charges and any other amounts paid by IHLSEM with respect to such Deliverable, including professional service fees, licensing fees, support fees and any other fees or amounts paid by IHLSEM under this Agreement. In addition,

Vendor agrees to indemnify, defend, protect and hold harmless IHLSEM and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement with respect to any claim, litigation or action that is based on a claim of infringement, misappropriation or violation of an intellectual property right, proprietary right, personal right or trade secret related to the Deliverables. The foregoing remedies shall be in addition to and not exclusive of other remedies available to IHLSEM and shall survive termination of this Agreement.

8.5 Vendor agrees that all Deliverables, including, without limitation, all patents, copyrights, inventions, trade secrets and all other intellectual property rights and proprietary rights therein or related thereto, shall become and remain the sole and exclusive property of IHLSEM. Vendor hereby irrevocably transfers, assigns and conveys all right, title and interest in and to such Deliverables and all intellectual property rights and proprietary rights therein or related thereto to IHLSEM. Vendor represents and warrants that IHLSEM shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Vendor or of any Third Party. Vendor shall take all actions as may be necessary or requested by IHLSEM to irrevocably transfer, assign and convey such Deliverables and all intellectual property rights and proprietary rights therein and related thereto to IHLSEM. IHLSEM shall have the right to obtain and hold in its own name or in the name of the State of Iowa copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Vendor shall assist IHLSEM to obtain or perfect copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to IHLSEM all the right, title and interest in and to such Deliverables. Vendor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Vendor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of IHLSEM and the payment of such royalties or other compensation as IHLSEM deems appropriate. As the owner of such Deliverables, IHLSEM may: (i) adapt, change, modify, edit or use the Deliverables as IHLSEM sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Vendor.

8.6 All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to IHLSEM, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

8.7 Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as IHLSEM notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to IHLSEM, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse IHLSEM any fees paid to Vendor for the unsatisfactory services.

8.8 Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.

8.9 Vendor represents, warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

8.10 Vendor represents and warrants that the Deliverables shall comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement.

8.11 Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Agreement are or will be fully satisfied by the Vendor so that IHLSEM will not have any obligations with respect thereto.

Section 9. Indemnification.

9.1 Vendor and its successors and permitted assigns shall defend, protect, indemnify and hold harmless IHLSEM, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

9.1.1 Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, without limitation, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete; or

9.1.2 Any act or omissions of Vendor, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, contractors or subcontractors or any other person in connection with the services or Deliverables provided hereunder or Vendor's performance of this Agreement; or

9.1.3 Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to social security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Iowa; or

9.1.4 Any alleged or actual infringement, misappropriation or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including, without limitation, any patents, trademarks, trade dress, trade secrets, or copyrights of a Third Party.

9.2 Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by IHLSEM or any other Indemnitee.

9.3 IHLSEM will reasonably cooperate with Vendor to facilitate the defense of any action defended by Vendor. IHLSEM reserves the right to participate in the defense of any such action.

Section 10. Default and Termination.

10.1 Termination for Cause. IHLSEM may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in IHLSEM's notice of breach or any subsequent notice or correspondence delivered by IHLSEM to Vendor, provided that cure is feasible. Following expiration of the opportunity to cure or notice from IHLSEM, IHLSEM may seek any available contractual, legal or equitable remedies. [Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages.] Vendor may only terminate this Agreement upon written notice for the breach by IHLSEM of any material term, condition or provision of this Agreement, if such breach is not cured within 60 days of IHLSEM's receipt of Vendor's written notice of breach. In addition, IHLSEM may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:

10.1.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

10.1.2 Vendor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws;

10.1.3 Vendor terminates or suspends its business;

10.1.4 IHLSEM reasonably believes that Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

10.1.5 Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement; or

10.1.6 Vendor infringes or allegedly infringes on any patent, trademark, copyright, trade dress or other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret.

10.2 Termination Upon Notice. Following thirty (30) days written notice, IHLSEM may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor.

10.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, IHLSEM shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

10.3.1 The legislature or governor fail in the sole opinion of IHLSEM to appropriate funds sufficient to allow IHLSEM to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

10.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by IHLSEM to make any payment hereunder are insufficient or unavailable for any other reason as determined by IHLSEM in its sole discretion; or

10.3.3 If IHLSEM's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

10.3.4 If IHLSEM's duties, programs or responsibilities are modified or materially altered; or

10.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects IHLSEM's ability to fulfill any of its obligations under this Agreement or to participate in the ODP grant program or Partnership.

IHLSEM shall provide Vendor with written notice of termination pursuant to this section.

10.4 Limitation of IHLSEM's Payment Obligations in the Event of Termination. In the event of termination of this Agreement for any reason by either party (except for termination by IHLSEM pursuant to Section 10.1), IHLSEM shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which notice of Acceptance has been provided by IHLSEM and for which IHLSEM is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to IHLSEM and shall not be construed to require IHLSEM to pay: (i) any compensation or other amounts in the event of Vendor's breach, or (ii) any amounts withheld by IHLSEM in accordance with the terms of this Agreement. In no event shall IHLSEM be liable for any of the following:

- 10.4.1 The payment of unemployment compensation to Vendor's employees;
- 10.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
- 10.4.3 Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;
- 10.4.4 Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;
- 10.4.5 Any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Vendor's Termination Duties. Vendor, upon receipt of notice of termination or upon request of IHLSEM, shall:

- 10.5.1 Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as IHLSEM may require.
- 10.5.2 Immediately cease using and return to IHLSEM any property (including, without limitation, IHLSEM Property and Partnership Participant Property) or materials, whether tangible or intangible, provided to Vendor by IHLSEM or any state or state agency participant in the Partnership.
- 10.5.3 Cooperate in good faith with IHLSEM and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- 10.5.4 Immediately return to IHLSEM any payments made by IHLSEM for services or Deliverables that were not rendered or provided by Vendor.

Section 11. Insurance.

11.1 Insurance Policies. Vendor shall maintain in full force and effect, with insurance companies of recognized responsibility, at its expense, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against loss or damage resulting from Vendor's performance of this Agreement. All such insurance policies shall remain in full force and effect for the entire term of this Agreement and shall not be canceled or changed without IHLSEM's prior written consent.

Unless otherwise requested by IHLSEM, Vendor shall, at its sole cost, cause to be issued and maintained in effect during the entire term of this Agreement not less than the insurance coverage's set forth below each naming IHLSEM and the State of Iowa as an additional insured or loss payee, as applicable:

<i>Type of Insurance</i>	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 million
	Prod./Comp.	
	Aggregate	\$1 million
	Personal injury	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$1 million
	Each Occurrence	\$1 million
	Aggregate	\$2 million
Errors and Omissions Insurance	Each Occurrence	\$2 million
Property Damage	Each Occurrence	\$1 million
	Aggregate	\$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	

IHLSEM reserves the right to negotiate actual limits with Vendor

11.2 Claims Provision. All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

11.3 Certificates of Coverage. Certificates of the insurance described above shall be submitted to IHLSEM within thirty (30) days after the effective date of this Agreement and shall be subject to approval by IHLSEM. Vendor shall provide certificates for the coverage required. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days prior written notice to IHLSEM.

11.4 No Limitation of Liability. Acceptance of the insurance certificates by IHLSEM shall not act to relieve Vendor of any obligation under this Agreement. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State of Iowa. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement.

11.5 Warranty. Vendor warrants that it has examined its insurance coverage to determine whether IHLSEM and the State can be named as additional insureds without creating an adverse effect on Vendor's coverage.

11.6 Waiver of Subrogation Rights. Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against IHLSEM or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to IHLSEM.

Section 12. Contract Administration.

12.1 Independent Contractor. Vendor is an independent contractor performing services for IHLSEM. Vendor shall not hold itself out as an employee or agent of IHLSEM. IHLSEM shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of IHLSEM or the State for any purpose, including federal and State tax purposes. IHLSEM shall not withhold taxes on behalf of Vendor, unless required by law. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

12.2.1 Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this

Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

12.2.2 Vendor agrees that any Web sites developed by it pursuant to this Agreement will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise ("ITE"). Vendor agrees that it will comply with and adhere to all information technology standards specified by ITE, including any applicable technical and security standards, procedures and protocols in connection with the development by Vendor of any Web site.

12.2.3 Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

12.2.4 IHLSEM may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality.

12.3.1 Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by IHLSEM or the State ("IHLSEM Property"), or by any other state or state agency that is a participant in the Partnership ("Partnership Participant Property") to the extent necessary to carry out its responsibilities under the Agreement. All IHLSEM Property shall always remain the property of IHLSEM and/or the State, and all Partnership Participant Property shall always remain the property of the state or state agency participant that furnishes Partnership Participant Property. Vendor shall preserve the confidentiality of all IHLSEM Property and Partnership Participant Property disclosed or furnished to Vendor under this Agreement and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all IHLSEM Property and Partnership Participant Property received, collected, used, or disseminated by Vendor in connection with the performance of the Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by IHLSEM or a state or state agency participant to execute confidentiality or non-disclosure agreements to obtain access to certain IHLSEM Property and Partnership Participant Property.

12.3.2 Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any IHLSEM Property or Partnership Participant Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by IHLSEM or the pertinent state or state agency participant to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of

this Agreement or thereafter. Vendor agrees to return any and all IHLSEM Property and Partnership Participant Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of IHLSEM or any state or state agency participant. In the event that Vendor receives a request for access to any IHLSEM Property or Partnership Participant Property, Vendor shall immediately communicate such request to IHLSEM for consideration and handling.

12.3.3 Vendor shall indemnify IHLSEM, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, IHLSEM may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

12.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

12.5 Third Party Rights. No person other than the Vendor, the State, IHLSEM, the Partnership and all state or state agency participants in the Partnership may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended only to benefit IHLSEM, the State, the Partnership, all state or state agency participants in the Partnership and Vendor.

12.6 Choice of Law and Forum.

12.6.1 The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

12.6.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

12.6.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to IHLSEM or the State.

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide IHLSEM with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by IHLSEM. Nothing in this provision will alter the right of IHLSEM to serve process in any other manner permitted by law.

12.6.5 This Section 12.6 shall survive termination of this Agreement.

12.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that IHLSEM may assign this Agreement to any State agency or unit of State government that succeeds IHLSEM's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by IHLSEM to which the Deliverables relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide IHLSEM with the earliest possible advance notice of any proposed sale or

transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of IHLSEM.

12.8 Use of Third Parties. None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of IHLSEM. IHLSEM's consent shall not be deemed in any way to provide for the incurrence of any obligation of IHLSEM in addition to the total fixed price agreed upon in this Agreement. Any subcontract to which IHLSEM has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that IHLSEM may deem necessary. Vendor is solely liable for any and all payments that may be due to the subcontractor pursuant to its subcontract with Vendor. Vendor shall indemnify, defend and hold harmless IHLSEM and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract in which it enters, including Vendor's failure to pay any and all amounts due by Vendor to any subcontractor. All subcontracts shall contain provisions for IHLSEM access to the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9 Integration. This Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement. IHLSEM shall not be bound by any "shrink-wrap" or "click-wrap" license or any other similar agreement that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against IHLSEM on the basis of draftsmanship or preparation thereof.

12.10 Obligation Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 5.1 - 5.4, 5.6, 5.7 - 5.12, 8.1 - 8.11, 9.1 - 9.4, 10.4 - 10.7, 11, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.15, 12.19, 12.24, 12.28, 12.30, 12.32, 12.33, and 12.35, and 12.36 shall survive termination of this Agreement and/or termination of Support.

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between IHLSEM and Vendor for the goods and services provided in connection with this Agreement.

12.12 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of IHLSEM and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.13 Notices.

12.13.1 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to IHLSEM:

If to Vendor:

12.13.2 Any notice or communication sent by U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

12.13.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.14 Cumulative Rights. The various rights, powers, options, elections and remedies of IHLSEM and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed IHLSEM and the State by law, and shall in no way affect or impair the right of IHLSEM or the State to pursue any other contractual, equitable or legal remedy to which IHLSEM and the State may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged. The election by IHLSEM or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.16 Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel providing services to IHLSEM are responsive to IHLSEM's requirements and requests in all respects.

12.17 Authorization. Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

12.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

12.19 Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

12.20 Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.21 Multiple Counterparts. This agreement shall be executed in two or more counterparts, any one of which shall be an original without reference to the others.

12.22 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. Each party shall be deemed an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

12.23 Additional Provisions. The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.24 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

12.25 Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

12.26 Force Majeure.

12.26.1 Neither Vendor nor IHLSEM shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

12.26.2 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Vendor or any parent, subsidiary, affiliated or associated company of Vendor or claims or court orders that restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

12.26.3 If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by IHLSEM.

12.27 Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

12.28 Right of Inspection. Vendor shall allow IHLSEM, or anyone designated by IHLSEM, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

12.29 Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. IHLSEM and the State are exempt from the payment of State sales and other taxes.

12.30 Title to Property. Title to all property (including IHLSEM Property) furnished by IHLSEM and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of IHLSEM and/or the State. In addition, title to all Partnership Participant Property furnished by any state or state agency participant in the Partnership to Vendor to facilitate the performance of this Agreement shall remain the sole property of the state or state agency participant that furnishes such property. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to IHLSEM upon the earliest of completion, termination, or cancellation of this Agreement or at IHLSEM's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by IHLSEM under this Agreement, shall pass to and vest in the State, except as otherwise provided in this Agreement.

12.31 Exclusivity. This Agreement is not exclusive. During the term of this Agreement, IHLSEM may obtain similar services from other service providers.

12.32 Award of Related Agreements. IHLSEM may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by IHLSEM in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by IHLSEM will abide by this provision.

12.33 Sovereign Immunity. IHLSEM and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

12.34 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to IHLSEM at the time the above-cited documents were prepared. IHLSEM does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

12.35. Attorney's Fees and Expenses. Subject to the other terms and conditions of this Agreement, in the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to IHLSEM all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of IHLSEM) incurred by IHLSEM in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.36 Care of Property. Vendor shall be responsible for the proper custody and care of any IHLSEM-owned property (including data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and IHLSEM Property) and any Partnership Participant Property furnished for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at IHLSEM's request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by IHLSEM. In addition, at IHLSEM's request, Vendor will reimburse IHLSEM for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of IHLSEM and the State, or of any other state or state agency that is a participant in the Partnership. Vendor shall obtain the prior advance written approval from IHLSEM prior to Vendor's use of the name, marks or intellectual property rights of IHLSEM or the State. Vendor shall obtain the prior advance written approval from any other state or state agency participant in the Partnership prior to Vendor's use of the name, marks or intellectual property rights of such participant.

12.37 Suspension and Debarment. Vendor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions or participation in this Agreement by any Federal department or agency.

12.38 Lobbying Restrictions. Vendor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

12.39 Certified Audits. Local governments and non-profit subrecipient entities that expend \$300,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to IHLSEM if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to Federal awards provided by IHLSEM. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to IHLSEM that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to Federal awards provided by IHLSEM. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

12.40 Drug Free Work Place. Vendor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

Iowa Department of Public Defense, Homeland Security [Vendor]
and Emergency Management Division

By: _____
Name: _____
Title: _____

Date: _____

By: _____
Name: _____
Title: _____

Date: _____

SCHEDULE A

STATEMENT OF WORK

SCHEDULE B

PERFORMANCE STANDARDS AND RELATED PROVISIONS

SCHEDULE C
PROJECT PLAN

EXHIBIT __